
(1958) 02 AP CK 0012

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1132 of 1956

Murali Krishna Rice Mill

APPELLANT

Vs

Additional Income Tax Officer

RESPONDENT

Date of Decision : 08-02-1958

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 44

Citation : (1959) 36 ITR 239

Hon'ble Judges : P. Satyanarayana Raju, J

Bench : Single Bench

Advocate : K. Ranganathachari and N.V. Ranganathan, for the Appellant;

Final Decision : Dismissed

Judgement

Satyanarayana Raju, J.—This is an application for the issue of a writ of mandamus directing the Additional Income Tax Officer, Tenali, to forbear from enforcing the order of assessment in G.I.R. No. 338-S/53-54 dated the 9th July, 1956, and from taking steps for collection of tax for the assessment year 1953-54 by reason of his orders dated the 8th of October, 1956, and dated the 26th November, 1956.

2. The petitioner was a firm of five partners which carried on business in milling paddy and rice. For the assessment year 1953-54 the firm was assessed to tax of an income of Rs. 36, 206 and it was required to pay a tax of Rs. 9, 561-8-0 on or before the 10th of August, 1956. Against the order of assessment made by the respondent, the petitioner filed appeals to the Appellate Assistant Commissioner which are now pending before him. On the 14th of December, 1956, the petitioner has filed this writ petition for the reliefs mentioned supra.

Sri K. Ranganathachari, learned counsel for the petitioner, has raised three contentions before me : (1) that after its dissolution, the firm as such cannot be assessed and that the proper procedure is to assess the partners jointly or

severally; (2) that the notice of demand served on the managing partner of the assessee is illegal and ultra vires the powers of the assessing authority; and (3) that, in any view of the matter, the Income Tax Officer should not have treated the petitioner as a defaulter and that he should have stayed the collection of tax till the disposal of the appeals pending before the Appellate Assistant Commissioner of Income Tax.

3. Mr. Ranganathachari has contended that the construction of section 44 of the Income Tax Act by the respondent is wrong and that it is a clear case of absence of jurisdiction apparent on the face of the record and that, therefore, this court ought to interfere and set aside the order of assessment. In support of this contention he has relied upon a decision of the Bombay High Court in *S. C. Prashar v. Vasantsen Dwarkadas*. There the learned Chief Justice Chagla and Tendolkar, J., were dealing with a case where the assessee immediately on the issue of a notice u/s 34 challenged the competency of the Income Tax Officer to take any assessment proceedings pursuant to the notice, in other words, there the petitioner has attacked the very basis of the assessment proceedings which the Income Tax authorities proposed to initiate. The present case is one where the Income Tax authorities have completed the assessment and against the order of assessment, the petitioner has preferred appeals before the Appellate Assistant Commissioner of Income Tax. If need be, from the orders of the Appellate Assistant Commissioner, the petitioner has a right of appeal to the Income Tax Appellate Tribunal. He has a further right u/s 66(1) of the Income Tax Act to ask for a reference to the High Court. The Act thus provides a hierarchy of tribunals where the petitioner can agitate his contentions. Mr. Ranganathachari, however, has submitted that the want of jurisdiction in the Income Tax Officer being patent, the petitioner should not be driven to seek his remedies before the authorities provided under the Act and that this is a fit case for the exercise of jurisdiction under article 226. In the very decision cited by the learned counsel, it was observed by the Bombay High Court as follows :

"If an assessee does not challenge the notice issued u/s 34 and allows the Income Tax authorities to assess him and then challenges the assessment, the position may be very different, because than it may be said that the Income Tax Act itself gives him an adequate remedy for the purpose of challenging the assessment."

4. In the present case the petitioner did not challenge the notice issued to him. On the other hand he submitted a return of his income and after considering the objections raised by the petitioner, an assessment order was finally passed. He allowed the Income Tax authorities to assess and is now trying to challenge the assessment on the ground of want of jurisdiction.

5. The petitioner has relied upon a decision of the Calcutta High Court in *Commissioner of Income Tax v. Bhim Chandra Ghosh* as supporting his construction of section 44 of the Income Tax Act and has argued that if that decision was followed the assessment cannot stand. for the Department has

however brought to my notice two decisions of the Madras High Court in Pandu Rao v. Collector of Madras and Mareddi Krishna Reddy v. Income Tax Officer, Tenali. On a consideration of these decisions, I find that there can be two possible views on the construction of section 44 of the Income Tax Act. Therefore the want of jurisdiction, which according to the learned counsel for the petitioner gives jurisdiction to this court to quash the assessment order itself at this stage, cannot be said to be so patent. Having regard to the undoubted and adequate remedies which the petitioner has under the Income Tax Act and having regard to the further fact that the petitioner has himself taken advantage of the remedy provided under that Act by filing appeals before the Appellate Assistant Commissioner, I do not think that this is a fit case for the exercise of jurisdiction vested in this court under article 226. It is then stated by the learned counsel that the Income Tax Officer ought to have exercised his discretion u/s 45 of the Act by staying the collection of the tax till the disposal of the appeals filed by the petitioner. It is stated that subsequent to the filing of this writ petition in this court and in compliance with the order made by this court, he has deposited Rs. 5, 000 towards the demand of tax made upon him. The fact that he has deposited Rs. 5, 000 in compliance with an order made by this court would not, however, give him a right to ask for the stay of collection of tax pending the disposal of the appeals by the Income Tax authorities.

6. I am not satisfied that the petitioner is entitled to seek the reliefs prayed for by him under article 226. This writ petition, therefore, fails and is dismissed with costs. Advocate's fee Rs. 100.